WP(C) 4025/2005
BEFORE
THE HON'BLE MR. JUSTICE H.N. SARMA

Heard Mr. R.P. Sarma, learned Sr. Counsel assisted by Mr. M.R. Adhikari, learned counsel for the petitioners. Also heard Mr. P. Sundi, learned counsel for the Assam Small Industries Development Corporation (ASIDC) and Mr. M. Das, learned Government Advocate, representing the respondents No. 1 to 3.

The petitioner was appointed as Chaukidar in a Grade-IV post in the Cachar Textile Industries Processing Unit, Badorpurghat under the ASIDC Limited on 7.3.1968. Pursuant to the said appointment, the petitioner joined his service and worked without any blemish. However, since March, 1998, monthly salary payable to the petitioner and other staff of the Unit could not be paid due to paucity of fund. Various demands made by the petitioner and others employees resulted no fruitful effect. With a view to get rid of the over employees, the management of ASIDC flouted a Voluntary Retirement Scheme circulated vide letter dated 9.4.2002. In terms of the said letter, the petitioner opted for such voluntary retirement by giving his option vide letter dated 3.5.2002. Similar option for voluntee r retirement was also given by some other employees of the Unit. Thereafter, the authority abandoning the Voluntary Retirement Scheme closed the Unit for financial crunch and retrenchment compensation were given to the employees of the Corporation. Accordingly, the grievance of the petitioner is that the petitioner having opted for voluntary retirement, such voluntary retirement as called for by the management, the authority should have given him the necessary benefits under such scheme. Further grievance of the petitioner is that the salary of the petitioner since March, 1998 which remained unpaid also be directed to be paid. The petitioner also claimed for such arrear salary alongwith consequential revision of pay and other consequential benefits. The respondent authority not having done anything, the petitioner has approached this Court by filing the instant writ petition.

The Corporation has filed a counter affidavit in the case. The stand of the respondent/corporation in the counter affidavit filed is that although the corporation adopted the policy for Voluntary Retirement Scheme, the same has not been implemented by the State Level Public Enterprises of Assam and the Unit has been closed down with effect from 31.3.2003 due to financial crunch and the employee including the petitioner have been paid the necessary retrenchment compensation as admissible under Section 25 FFF of the Industrial Disputes Act. It is the further stand of the respondent/corporation that the petitioner is entitled to a sum of Rs. 2,32,385/- including arrear salary out of which a sum of amount of Rs. 75,329/0 has been paid keeping the remaining amounts in arrear. However, during the course of argument it is contended by the learned counsel for the respondents that during the pending of the writ petition, some more amount has been paid to the petitioner.

Mr. Sarma, learned Sr. Counsel for the petitioner contended that apart from the aforesaid amount of Rs. 75,329/-, the petitioner has been further paid an amount of Rs. 32000/-, whereas Mr. Sundi, learned counsel for the respondent/corporation submits that in total Rs. 1,85,494/- have been paid to the petitioner out of his total dues of Rs. 2,32,385/-. The State respondent has not filed any counter affidavit. Against the contention of Mr. Sarma, learned Sr. Counsel for the petitioner submits that the respondent authority acted wholly arbitrary and illegally in not accepting the option for Voluntary Retirement Scheme opted by the petitioner. It is seen from the letter dated 9.4.2002, inviting application for such Voluntary Retirement Scheme that acceptance of the voluntary retirement option of the employees by the management will be subject to administrative norms, Govt. approval and availability of fund. The stand of the corporation is that the said Voluntary Retirement Scheme could not be implemented as the State Level Public Enterprises of Assam did not accept the same. In such a situation, the aforesaid scheme did not attain its finality. Invitation of such application to avail benefits of such scheme from the employee is an offer and unless the offer of the employee is accepted, the employees is not entitled to make any claim o

n that count merely by giving his option. On that count the first submission of Mr. Sarma, is not acceptable.

Regarding other submission that the petitioner is entitled to get arrear salary and so far he is not paid such arrear has got sufficient force. Calculating the necessary retrenchment compensation the corporation found that the petitioner is entitled to get an amount of Rs. 2,32,385/- alongwith arrear salary. Out of the said amount, as in the Annexure-2 to the counter affidavit, it is seen that Rs, 75,329/- has been paid to the petitioner. Although, some more amount has been paid during the pendency of the writ petition, there is a dispute regarding the amount so paid. The dispute however, will not stand in the way in disposing the writ petition.

Admittedly, the petitioner is entitled to get the amount as calculated by the authority as Rs. 2,32,385/- while calculating the dues on retrenchment out of which some amount is yet to be paid. Since the Unit has already been closed with effect from 31.3.2003 and the petitioner is not getting his salary since March, 1998 as submitted by the learned counsel for the petitioner that the petitioner has been facing acute financial hardship. On the other hand entitlement of the petitioner to get the remaining amount is not disputed by the respondents. In that view of the matter, the authority is directed to pay the balance amount remaining payable to the petitioner in terms of the said calculation within a period of three months from the date of receipt of the certified copy of this order. Mr. Sarma, learned counsel for the petitioner submits that apart from the aforesaid amount as calculated by the authority, the petitioner is also entitled to some more amounts. If any such amount is entitled by the petitioner, the petitioner is at liberty to approach the appropriate forum for the purpose, if so advised.

With the above direction, the writ petition is disposed of.